

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 7030/Del/2018
(Assessment Year : 2011-12)

ACIT Central Circle-20, New Delhi PAN No. AHMPG 7446 H (APPELLANT)	Vs.	Gautam Gulati D-102, Block-D, Saket New Delhi-110 017 (RESPONDENT)
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Assessee by	Shri Mayank Aggarwal, Adv. Shri Sumit Mangal, Adv.
Revenue by	Shri Dilip Singh Kothari, CIT(DR)

Date of hearing:	09.02.2022
Date of Pronouncement:	17.02.2022

PER ANIL CHATURVEDI, AM :

This appeal filed by the Revenue is directed against the order dated 08.08.2018 passed by the Commissioner of Income Tax (Appeals)-27, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO was noted that a search & seizure and survey operation u/s 132/133A of the Act was conducted on 20.06.2014 in M/s. Alchemist Group of cases and the assessee's residential premises was also covered u/s 132(1) of the Act. Thereafter, notice u/s 153A of the Act was issued to the assessee on 30.12.2015 and in response to which assessee filed his return of income on 05.01.2016 declaring total income at Rs.80,76,070/-. Thereafter, assessment was framed u/s 153A/143(3) of the Act vide order dated 19.12.2016 and the total income was determined at Rs.3,57,17,610/- *inter alia* by making additions on account of unexplained deposits in bank accounts, disallowance of interest expense against income from house property, disallowance of deductions u/s 80C, 80G and 80D of the Act etc. Aggrieved by the order of AO, Assessee carried the matter before the CIT(A) who vide order dated 08.08.2018 in Appeal Nos. 372 to 374, 384, 385, 397 & 398/16-17 granted substantial relief to the assessee. Aggrieved by the order of CIT(A), Revenue is now before us and has raised the following grounds:

1. *Whether in law and on facts of the case Ld. CIT(A) has erred in dismissing the appeal of the revenue by relying on the decision of Hon'ble High Court in 380 ITR 573 in CIT Vs Kabul Chawla, without properly appreciating the provisions contained in section 153A of the I.T. Act which doesn't require to have any incriminating material found during search & seizure action as an essential requirement for making an addition in the assessment.*
2. *Whether in law and on facts of the case Ld. CIT(A) has erred in dismissing the appeal of the revenue by relying on the decision of Hon'ble High Court in 380 ITR 573 in CIT Vs Kabul*

Chawla, without properly appreciating the provisions contained in section 153A which starts with the non-obstante clause which seeks to operate in supersession of provisions contained in sections 139,147,148,149,151 and 153.

3. *Whether in law and on facts of the case Ld. CIT(A) has erred in dismissing the appeal of the revenue by relying on the decision of Hon'ble High Court in 380 ITR 573 in CIT Vs Kabul Chawla, without properly appreciating the provisions contained in section 153A which have been inserted w.e.f. 01.06.2003 after the provisions contained in section 158BC & other allied provisions contained in chapter XIV-B were made inapplicable after 31.05.2003 as per section 158BI of the I.T. Act.*
4. *Whether in law and on facts of the case Ld. CIT(A) has erred in dismissing the appeal of the revenue relying on the decision of Hon'ble High Court in 380 ITR 573 in CIT Vs Kabul Chawla, without properly appreciating the facts that the decision has been further contested by the Department in the Hon'ble Supreme Court for adjudication on the Principal of law and Equity which is pending.*
5. *Whether in law and on facts of the case Ld. CIT(A) has erred in allowing relief in respect of following additions:-*
 - (i) *Addition of Rs. 1,50,000/- on account of interest expenses but no documentary evidence for the interest paid is furnished.*
 - (ii) *Addition of Rs. 4,58,365/- on account of disallowance of exempt income but no documentary evidence is furnished.*
 - (iii) *Disallowance of deduction u/s 80C amounting to Rs. 1,00,000/- but no evidences is furnished.*
 - (iv) *Whether in law and on facts of the case Ld. CIT(A) has erred in deleting the Addition of Rs.24,32,661/- on account of disallowance of unexplained deposits in bank accounts without examining the facts and circumstances of the case.*

6. (a) *Whether in law and on facts of the case the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*
- (b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.*

4. At the outset, both the parties submitted that though the Revenue has raised the various grounds but the sole controversy is the deletion of addition made by AO and deleted by CIT(A) by following the decision of Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla (380 ITR 573)**.

5. Before us, Learned DR supported the order of AO.

6. Learned AR on the other hand reiterated the submissions made before the AO/CIT(A) and further submitted that no incriminating document or evidence during the search operation was found and the additions made by AO are not based on the incriminating material. He further submitted that since on the date of search the assessment for the year under consideration was completed as the time period for issuing notice u/s 143(3) has already expired and therefore, following the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra), no additions could be made and the CIT(A) had rightly deleted the addition. He thus supported the order of CIT(A).

7. We have heard the rival submissions and perused the material available on record. The issue in the present appeal is

with respect to the additions made by AO and deleted by CIT(A). We find that CIT(A) while deleting the additions has given a finding that on the date of search i.e. on 20.06.2014, the assessment for the impugned year was a completed assessment as the time period for issuing the notice u/s 143(2) of the Act has already expired. He has further given a finding that the additions made by AO were not on the basis of any incriminating documents found during the search proceedings and that the assessment order also does not speak about the finding of any incriminating documents or evidence found during the course of search proceedings. CIT(A) while deleting the additions had followed the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) and the decision in the case of PCIT vs. Meeta Gutgutia 395 ITR 526. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A) nor has brought on record any contrary binding decisions in its support. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 17.02.2022

Sd/-
(NARENDER KUMAR CHOUDHARY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Date:- 17.02.2022

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT